

PTO/SB/21 (09-04)

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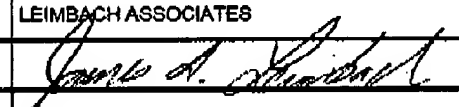
Total Number of Pages In This Submission **4**

Application Number	09/854,393
Filing Date	05/11/2001
First Named Inventor	Horst Rumpf
Art Unit	2655
Examiner Name	Jorge L. C. Ortiz
Attorney Docket Number	DE 000078

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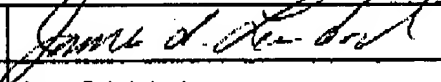
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<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<b>Remarks</b>	
	Enclosed is a petition that seeks supervisory review. Therefore, no petition fee is due. If it is determined that a petition fee is due, the Commissioner is authorized to charge any fees associated with the filing of this Petition, excluding issue fees, to Account No. No. 50-3745.	

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	LEIMBACH ASSOCIATES		
Signature			
Printed name	James D. Leimbach		
Date	June 28, 2006	Reg. No.	34,374

**CERTIFICATE OF TRANSMISSION/MAILING**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND**  
**INTERFERENCES**

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**JUN 28 2006**

In re Application of  
Horst Rumpf et al.

Group Art Unit: 2655

Examiner: Jorge L. C. Ortiz

APPARATUS HAVING A  
CONTROL CIRCUIT

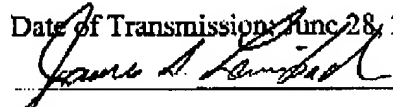
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Serial No. 09/854,393

Filed: May 11, 2001

Confirmation No. 8218

Date of Transmission: June 28, 2006



Name: James D. Leimbach  
Registration No. 34,374

VIA FACSIMILE TRANSMISSION TO:  
Chief Administrative Patent Judge  
Honorable Commissioner of Patents and Trademarks  
Alexandria VA, 22313-1450

Sir:

**Petition to the Under 37 C.F.R. §1.181**

This is a Petition to invoke the supervisory authority of the Director and  
Designate a New Ground of Rejection for a pending appeal before the Board of Patent Appeals.

This petition seeks supervisory review and there should be no fee charged;  
however, the Commissioner is hereby authorized to charge any fees associated with the filing of  
this Petition, including extension fees but excluding issue fees, to Account No. 50-3745, and to  
credit any overpayments to the same account.

Serial No. 09/854,393

The appellants have received and considered the Examiner's Answer that was mailed April 28, 2006. The appellants hereby petition the Director to designate a new ground of rejection has been made in a pending appeal before the Board of Patent Appeals and Interferences. The Examiner's Answer mailed on April 28, 2006 contained a new ground of rejection that was not designated as a new ground of rejection under 37 C.F.R. §41.39.

The rejection of appealed claims 1, 3, 5-9, 12-18 and 20 under the provisions of 35 U.S.C. §103(a) has been obvious over *Hsin et al.* in view of the admitted prior art of *Hsin et al.* The Examiner's Answer mailed on April 28, 2006 states on page 14 that "the examiner provided the Appellant with *extrinsic* evidence made of record, Japanese Publication Number: 62-229403, which teaches that a controller's parameters are adapted during operation." The appellant asserts that this is a new rejection that has not before been presented during the prosecution of this case.

The Final Office Action mailed June 29, 2005, in the first paragraph on page 15 contains a statement that the prior art made of record not relied upon but considered pertinent. The second paragraph on page 15 of the Final Office Action mailed June 29, 2005 contains a statement that Japanese Publication Number: 62-229403 teaches an apparatus having a control circuit and controller, characterized in that an adaptation of the parameters of the feed forward filter arrangement are adapted by an adaptation algorithm during operation. This mentioning of Japanese Publication Number: 62-229403 (along with numerous other references) is not part of any rejection involved in this appeal.

Therefore, the examiner's attempts within the Examiner's Answer to use Japanese Publication Number: 62-229403 creates a combination that the appellant has not had a fair opportunity to respond to. *Hsin et al.* do not mention Japanese Publication Number: 62-229403 and Japanese Publication Number: 62-229403 is not part of the admitted prior art to *Hsin et al.* The appellants request that the use of Japanese Publication Number: 62-229403 in the rejection of appealed claims 1, 3, 5-9, 12-18 and 20 under the provisions of 35 U.S.C. §103(a) has been obvious over *Hsin et al.* in view of the admitted prior art of *Hsin et al.* as done in the Examiner's Answer be designated as a new rejection under 37 C.F.R. §41.39.

Serial No. 09/854,393

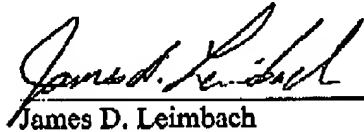
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Accordingly, the Examiner's Answer mailed on April 28, 2006 contains a new ground of rejection that was not designated as a new ground of rejection under 37 C.F.R. §41.39.

In summary, the Examiner's Answer contains a rejection that should be designated as a new rejection pursuant to 37 C.F.R. §41.39.

The appellants seek the supervisory review. Therefore, there is no fee due under 37 C.F.R. §41.20. If it is determined that a petition fee is due, the Commissioner is hereby authorized to charge any fees associated with the filing of this Petition, including extension fees but excluding issue fees, to Account No. 50-3745, and to credit any overpayments to the same account.

Respectfully submitted,

  
James D. Leimbach  
Attorney for Appellants  
Registration No. 34,374

Telephone: 585-381-9983  
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Serial No. 09/854,393